



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

MEMORANDUM

TO: James Kenney, Secretary, New Mexico Environment Department

THROUGH: Rick Shean, Director, Resource Protection Division

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Date: 2023.04.12 10:12:14
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FROM: Ricardo Maestas, WIPP Staff Manager, Hazardous Waste Bureau

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Maestas
Date: 2023.04.11 14:42:45 -06'00'

CC: Christal Weatherly, General Counsel, Office of General Counsel
Andrew Knight, General Counsel, Office of General Counsel

DATE: April 11, 2023

RE: HEARING RECOMMENDATION AND DETERMINATION REQUEST
RENEWAL DRAFT PERMIT
FOR THE WIPP HAZARDOUS WASTE FACILITY PERMIT

On December 20, 2022, the New Mexico Environment Department (NMED) Hazardous Waste Bureau (HWB) issued a draft Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP) Renewal Application (Renewal Draft Permit). The U.S. Department of Energy (DOE) and Nuclear Waste Partnership LLC (NWP) had submitted the Renewal Application to NMED on March 31, 2020, along with an Updated redline strikeout (RLSO) for the Renewal Application on March 17, 2022, which incorporated a Class 3 Permit Modification Request entitled "*Construction and Use of Hazardous Waste Disposal Units 11 and 12.*" Note: Salado Isolation Mining Contractors LLC (SIMCO) replaced NWP on February 4, 2023 as the Management and Operating Contractor and Co-Permittee, along with DOE, for the WIPP facility.

On January 24, 2023, NMED received a request for a 60-day extension of the WIPP Renewal Draft Permit comment period signed by fourteen individuals representing eleven organizations. NMED approved this request on February 13, 2023, and the Renewal Draft Permit comment period now ends on April 19, 2023. To date, a total of ninety-eight comments have been received along with three requests for a public hearing. Previous renewal and permit modification comment periods have shown that the majority of comments are received in the final week, and especially on the final day, of the comment period. Given this, the HWB WIPP Group expects to receive a multitude of comments over the remainder of the comment period. The WIPP Group is also aware of at least six additional commenters who plan to request a hearing.

On March 31, 2023, the WIPP Group moderated an informal discussion between commenters who anticipate being parties in a hearing, as well as identified hearing requestors, and the Permittees, which included legal counsel from both NMED and the Permittees. The purpose of that discussion was to

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Hazardous Waste Bureau - 2905 Rodeo Park Drive East, Building 1 Santa Fe, New Mexico 87505-6313
Telephone (505) 476-6000 - www.env.nm.gov

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Hearing Determination Request WIPP Renewal Draft Permit
April 11, 2023

consider logistics and scheduling items for upcoming actions associated with the WIPP Renewal Draft Permit. All parties came to a consensus on a window of preferred dates for a public hearing in this matter. In order to give the assigned hearing officer the widest window of availability, the timeframe of August 28 – September 22, 2023 was identified as being acceptable to all parties.

During the March 31, 2023 informal discussion, hearing officers were discussed. The Permittees, as well as parties representing organizations in the Carlsbad area, stated they are amenable to any hearing officer chosen by the Secretary, including the NMED in-house hearing officer or hearing officers on contract with NMED. The Permittees' stated that their primary concern is the availability of the hearing officer during the timeframe in which all parties have stated an open schedule. Other stakeholders stated the view that hearing officers with an association to NMED would not be appropriate for the WIPP renewal hearing due to the important and high-profile nature of the renewal process. Don Hancock of Southwest Research and Information Center pointed out that during the original Permit hearing in 1999 and the first renewal hearing in 2010, an outside hearing officer was recruited and appointed. Joni Arends and Steve Zappe agreed that a hearing officer who has no connection to any of the parties should be selected.

The HWB WIPP Group recommends that this matter be docketed and set for a public hearing.

APPROVED

Approved

Disapproved

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Date: 2023.04.26 11:25:01 -06'00'

James C. Kenney
Secretary of the Environment Department